

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

-----X	
DAVIS INTERNATIONAL, LLC, HOLDEX,	:
LLC, FOSTON MANAGEMENT, LTD, and	:
OMNI TRUSTHOUSE, LTD,	:
	:
Plaintiffs,	:
v.	:
	:
NEW START GROUP CORP., VENITOM	:
CORP., PAN-AMERICAN CORP., MDM	:
BANK, URAL-GORNO METALURGICAL	:
COMPANY, EVRAZ HOLDING, MIKHAIL	:
CHERNOI, OLEG DERIPASKA, ARNOLD	:
KISLIN, MIKHAIL NEKRICH, and	:
ISKANDER MAKMUDOV,	:
	:
Defendants.	:
-----X	

**APPENDIX TO DEFENDANTS'
OPENING BRIEFS IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

Volume 3 of 13

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
BASE METAL TRADING, SA, et al., :
 :
 Plaintiffs, : Docket No. 00 CIV. 9627 (JGK)
 :
 -against- :
 :
 RUSSIAN ALUMINUM, et al., :
 :
 Defendants. :
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**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS THE AMENED COMPLAINT**

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PRELIMINARY STATEMENT

This lawsuit is about the claims of three US companies (along with various non-US residents) against seven US companies and one US citizen (along with non-US citizens) concerning harm suffered as a direct and proximate result of criminal racketeering activity in the US, including extortion, mail and wire fraud, and money laundering. This harm was caused, in part, through the corruption of court proceedings in Russia, which defendants' own legal expert confirmed in an article in one of Russia's most widely circulated newspapers.¹ Putting defendants' technical pleading arguments aside, this case, involving US plaintiffs and US defendants, and criminal conduct in the US, belongs in this Court and not in the inadequate Russian courts, which defendants have already corrupted in multiple legal proceedings.

The Harm Suffered by US Citizens as a Result of Criminal Acts in the US Perpetrated by US Citizens

First, substantial interests of US citizens have been harmed by defendants, including the following:

- **Plaintiffs Davis International LLC & Holdex LLC:** These two US companies held shares in Kochkanarsky GOK ("GOK"), and those shares were fraudulently taken from these US entities and transferred to four US defendant companies.
- **Plaintiff Nexis Products, LLC:** Another US company which loaned money to, and did business with, GOK, and which, as a result of defendants' illegal activities, is owed more than \$7 million.
- **Various Non-Parties:** (1) Felix Lvov, a US citizen, was murdered in connection with defendants' illegal takeover of the KRAZ aluminum plant; (2) AIOC Corp.,

¹ Defendants' expert Sergey Zankofsky wrote an article in Izvestia, a widely circulated Russian newspaper, in which he addressed corruption in the Russian bankruptcy courts, and cited as examples two companies that were taken over through such corruption. A copy of this article is annexed as Exhibit 14 to Declaration of James L. Bernard, dated September 20, 2002. For the reasons set forth in the accompanying Second Declaration of James L. Bernard, dated September 20, 2002, which has been filed under seal, plaintiffs and their experts have assumed that the company which is not identified in the article is Kochkanarsky GOK, one of two plants that were taken over by defendants. See Complaint ¶ 5.

the US company for which Lvov worked, was forced to declare bankruptcy after defendants' illegal takeover of KRAZ; (3) Aldeco (US), a US company, lost its contracts with KRAZ in court proceedings rigged by defendants; (4) ALCOA and Reynolds Aluminum, two major US companies, were denied the opportunity to purchase a controlling interest in the BRAZ aluminum plant as a result of defendants' illegal activities; and (5) Transworld (Aluminum), Inc. (US), a US company, lost various business opportunities with the SAZ and KRAZ aluminum plants as a result of defendants' illegal conduct.

Second, eight US defendants played an important and active role in the criminal scheme:

- Arnold Kislin: This New York resident operated and managed a number of party and non-party corporate entities that laundered the proceeds of defendants' illegal activities, including the wiring of bribes for Russian officials through banks in the US and the purchase of real estate in the US, traded in the metal that should have been traded with plaintiffs and, overall, facilitated other financial aspects of defendants' illegal scheme.
- Blonde Management, Inc. and Pan-American Corp.: These US corporations are managed by defendant Kislin in New York, and engaged in money laundering, including the wiring of funds through banks in the US to bribe Russian government officials in connection with defendants' overall illegal scheme.
- Sibirsky Aluminum Products (US) Corp.: This New York based US corporation engaged in money laundering through the trading of metal which should have been sold to plaintiffs, and, overall, facilitated financial aspects of the illegal scheme.
- New Start Group, Inc., Venitom Corp., Unidale, LLC and InvestLand LLC: These four companies were registered and incorporated in the US by defendant Kislin, and received the shares stolen from the Davis and Holdex plaintiffs, as well as from two other plaintiffs.

Third, all defendants committed a host of predicate acts in the US, including the following:

- Wire Fraud: Funds were transferred through US banks to take over the aluminum and vanadium plants in this case, including wire payments through US banks of specific bribe payments, funds extorted from plaintiffs and funds obtained from the illegal sale of aluminum and vanadium that should have been made to plaintiffs. In addition, defendants committed mail and wire fraud violations when they incorporated and registered the four US defendant corporations that received the fraudulently obtained shares from the two US plaintiffs and two non-US plaintiffs.
- Illegal Transactions in Monetary Instruments: Defendants committed predicate acts in violation of this statute based on these same mail and wire payments.

- **Money Laundering:** Defendants laundered money through US banks, and in real estate located in NY.
- **Hobbs and Travel Act Violations:** In addition to a specific instance in which defendant Deripaska traveled to an aluminum trade conference in Chicago and threatened to murder one of plaintiffs' key witnesses (and a Director of one of the plaintiffs), defendants committed a multitude of other extortionate acts that affected interstate and foreign commerce, as detailed below.

Defendants Corrupted Court Proceedings in Russia

Defendants have so thoroughly corrupted judicial proceedings in Russia, and retain the ability to do so in the future, that transferring this case to Russia would be tantamount to a dismissal of plaintiffs' claims. Under either a forum non or a comity analysis, corruption in prior proceedings, and a threat of corruption in future proceedings, are valid grounds for denying either motion. Here, the evidence of corruption, prior to plaintiffs taking any discovery on the matter, is overwhelming, and includes:

- **Defendants' Legal Expert:** Sergey Zankovsky, one of defendants' legal experts, in the Izvestia article, confirmed plaintiffs' specific claims of corruption in the Russian bankruptcy courts, as noted above and as detailed in note 1, supra. The impact of this candid assessment (after he submitted his "expert" report) disposes of any effort to rebut the substance of plaintiffs' claims of corruption.
- **Public Records:** In a report filed by a Russian prosecutor closing a criminal investigation of the GOK bankruptcy, the prosecutor disclosed that the Institute where Zankovsky worked concluded that there were "objective signs of intentional bankruptcy" at GOK, i.e., that the bankruptcy was corrupted.
- **Two Non-Party Fact Witnesses:** Messrs, Grishkovetz and Kuznetsov, two fact witnesses who worked in the Russian government in the very region where plaintiffs allege that defendants corrupted the NKAZ bankruptcy proceeding, provide stunning details of cases in which they were personally involved where the regional governor Aman Tuleyev, the same person who was bribed by defendants to exert his influence over the same regional court, corrupted other bankruptcy proceedings using the precise techniques plaintiffs allege herein involving the same judges in the NKAZ proceeding.
- **Other Non-Party Fact Witnesses:** Plaintiffs also offer affidavits from other fact witnesses who provide details concerning the following: (1) specific conversations with individual defendants and members of the RICO enterprise

in which these individuals expressed their intention to take over the NKAZ and GOK plants at issue through sham bankruptcy proceedings; (2) specific details of the bribe payments (including amounts, dates, originating parties (including the US defendants in this case)) made to corrupt regional governors Tuleyev and Roussell; and (3) conversations in which members of the so-called bankruptcy “rehabilitation” team referred to themselves as members of the “takeover” team; and, among many other details set forth below and in the accompanying declarations.

- **Plaintiffs’ General Corruption Expert:** Corroborating these claims of general corruption, plaintiffs provide an expert declaration from Professor Ethan Burger, an American scholar who studies corruption in the Russian courts and who details the substantial body of evidence that supports plaintiffs’ claim that the Russian courts are an inadequate forum for resolving plaintiffs’ claims, which is supported by plaintiffs’ Russian legal experts as described below.
- **Plaintiffs’ Specific Corruption Experts:** Providing further support to plaintiffs’ various fact declarations, plaintiffs provide declarations from Professor Burger, Russian Professors Golubev and Telyukina, and Russian attorney Kleymenov, all experts on Russian law, who reviewed the various judicial proceedings at issue and concluded that the proceedings were corrupted.

Putting aside the inadequacy of the Russian courts, based on the substantial US contacts of this lawsuit, defendants fail to meet their burden of proving that litigation in New York, under the Gulf Oil private and public interest factors, would be oppressive and vexatious out of all proportion to plaintiffs’ convenience, as the Supreme Court requires. Moreover, trying this lawsuit is not likely to involve complicated issues of Russian law, or even a substantial number of fact witnesses, given the transparent nature of the fraud committed on the court by appointed bankruptcy managers, as even defendants’ expert has recognized. And comity simply does not apply to judgments which were procured by fraud in an inadequate judicial system, putting aside other insuperable flaws related to this argument, discussed below.

In short, this case should remain in this Court because it involves substantial US based conduct by a number of US entities and individuals which harmed US interests, and because defendants are particularly capable of corrupting judicial proceedings in Russia, where the

judiciary is particularly susceptible to corruption.

STATEMENT OF FACTS

A. Introduction and Overview of the Parties

Defendants' criminal scheme is vast in scope, but the essence of the actions that harmed plaintiffs can be easily summarized.

Plaintiffs – three US companies (Davis, Holdex, Nexis), two Cyprus companies (Alucoal and Foston), two Russian companies (MIKOM and Polyprom), one Swiss company (BMT SA), one UK company (Omni) and one Guernsey company (BMT Ltd.)² – entered into commercial arrangements with two metal plants in Russia, defendant Novokuznetsk Aluminum Zavod (“NKAZ”) and GOK. Defendants, as part of a broad scheme to illegally control the metals business, committed various predicate acts in US, and ultimately took control over NKAZ and GOK and terminated these commercial arrangements.

1. The Aluminum Plaintiffs

The “Aluminum Plaintiffs” – BMT Ltd., BMT SA, Alucoal and MIKOM – traded aluminum and raw materials with NKAZ, with the exception of MIKOM, which managed NKAZ before defendants illegally took it over. After the takeover, these trading and management contracts were terminated and certain debts owed to BMT Ltd, BMT SA, and Alucoal have not been paid. See Complaint ¶¶ 23-31.³

² These abbreviations refer to the following entities: Davis International, LLC (“Davis”); Holdex, LLC (“Holdex”); Nexis Products, LLC (“Nexis”); Alucoal Holdings Ltd. (“Alucoal”); Foston Management, Ltd. (“Foston”); MIKOM; Polyprom; Base Metal Trading SA (“BMT SA”); Omni Trusthouse, Ltd. (“Omni”) and Base Metal Trading Ltd. (“BMT Ltd.”)

³ “Complaint” refers to the Second Complaint, dated March 26, 2002. All abbreviations not otherwise defined herein are consistent with the abbreviations used in the Complaint.

2. The Vanadium Plaintiffs

The “Vanadium Plaintiffs” refer to Davis, Holdex, Foston, Omni, Nexis and Polyprom. Davis, Holdex, Foston and Omni (“the Vanadium Shareholders”) collectively held more than 70% of the shares in a vanadium plant called GOK. Davis and Holdex are incorporated in West Virginia and Texas, respectively. Of the remaining plaintiffs, Nexis, which is organized in Utah, loaned money to, and did business with, GOK, and Polyprom traded with GOK. After GOK was taken over, the Vanadium Shareholders’ shares were fraudulently transferred to four US defendants, the loan agreements were dishonored, and the trading contracts cancelled. See id. ¶¶ 32-39.

3. The Defendants

Defendants Arnold Kislin, a resident of New York, Oleg Deripaska, Mikhail Chernoi and Iskander Makhmudov operated and managed the overall Illegal Scheme.⁴ See id. ¶¶ 41, 53, 59, 66. Deripaska, Chernoi and Makhmudov (collectively, “the Conspirators”) operate and manage defendants Russian Aluminum and Sibirsky Aluminum (“SibAl”). Defendant RUAL Trade, Ltd. (“RUAL”) is a trading arm of Russian Aluminum and maintains an office in New York; defendant Sibirsky Aluminum Products USA Corp. (“Sibirsky U.S.”) is the US trading arm of SibAl and maintains an office in New York. See id. ¶¶ 42-43 & 70-74; infra note 23. Defendant NKAZ is located in the Kemerovo region of Russia and became party to the Illegal Scheme only after it was taken over by the Conspirators.⁵

Defendants Bauxal Management SA, Blonde Management, Inc. (a New York

⁴ The roles played by the various defendants and non-party RICO members are described in greater detail in the Complaint, see id. ¶¶ 41-107, and are diagramed in a chart annexed to the Complaint as Ex. A.

⁵ Only MIKOM has asserted claims against NKAZ.

corporation), Blonde Investments, Metcare Management, SA, Unimetal Limited, SA and Pan-American Corp (also based in New York) are the key companies involved in the metal trading, money laundering, and bribery arms of the enterprises. See id. ¶¶ 44-46, 54, Exhibit A. Blonde Management, Inc., Blonde Investment, Inc., and Pan American are managed by Kislin in New York and launder funds through banks in the US which are used for bribe payments and which are also “cleansed” by investing in New York real estate. The companies also obtained credit cards from US banks for Deripaska’s, Chernoi’s and Makhmudov’s use and travels, including travel to the US. See id. ¶¶ 56-63.

Defendant Moskovskiy Delovoi Mir Bank (“MDM Bank”) is used by Deripaska, Chernoi, Makhmudov and Kislin to launder the proceeds from the Illegal Scheme, and to provide financing for their illegal activities. See id. ¶¶ 67-69.⁶ The GOK shares were fraudulently transferred to four defendant companies – New Start Group Corp., Venitom Corp., Unidale LLC and InvestLand LLC – all of which were registered and incorporated in the US by Kislin and under his control. See id. ¶¶ 89-93.

**B. Background to the Takeovers of NKAZ and GOK:
Defendants Consolidate Control Over the Aluminum Industry**

Before taking over NKAZ and GOK, Deripaska, Chernoi and Makhmudov conspired to take over three other major factories in Russia known as SAZ, KRAZ and BRAZ. See id. ¶¶ 121-24. These takeovers formed an integral part of their overall scheme to control the Russian metal industry, and the profits generated by these takeovers funded the takeovers of NKAZ and

⁶ Thus, plaintiffs do not simply allege that MDM Bank’s wrongdoing is limited to “performing its functions as a bank” and maintaining “correspondent accounts” in the US, contrary to MDM Bank’s brief. See MDM Mem. at 2, 8. Rather, MDM Bank directly participated in the scheme to bribe government officials and create sham debt. See, e.g., Complaint ¶ 69, 524.

GOK. The means and methods for taking over these plants – mail and wire fraud, bribery, extortion, murder and money laundering – were repeated in the takeovers of NKAZ and GOK, and establish a modus operandi of illegal conduct that corroborates and reinforces the continuity of the predicate acts that form the basis of plaintiffs’ RICO claims.

1. The SAZ Takeover

SAZ was the first aluminum plant taken over by Deripaska, Chernoi and Makhmudov. Originally, SAZ was partially controlled by Transworld (Aluminum), Inc. (US) (“Transworld”), which maintained an office and place of business in the US. Pursuant to a joint-venture between Transworld and affiliated companies controlled by defendant Sibirsky, Transworld was to receive aluminum from SAZ to sell in the US through trading companies organized in the British Virgin Islands (“BVI”). See id. ¶¶ 95-97, 125-26.

In late 1997 and early 1998, Sibirsky took over SAZ’s trading by establishing “sister” companies in the Bahamas with the same names as the BVI companies, and fraudulently shipped SAZ aluminum to the Bahamian companies and then into the US, where the sales’ proceeds were wired through banks in the US and laundered. Deripaska and SibAI, among others, are currently under criminal investigation in Switzerland for this conduct. See id. ¶¶ 127-34.

2. The KRAZ Takeover

Transworld was also involved in the ownership of KRAZ, along with Chernoi and KRAZ management. An American citizen, Felix Lvov, who worked for an American company, AIOC Corp., had a business relationship with KRAZ management. See id. ¶¶ 105, 135. In 1993, Chernoi began the takeover of KRAZ by murdering rivals who were also seeking to control KRAZ, including Lvov, in 1995. As a result of Lvov’s murder, AIOC Corp. collapsed and filed for bankruptcy. Transworld was forced to sell its interest in KRAZ at a distressed price, and

Chernoi arranged for false criminal charges (including murder charges involving alleged victims who are still alive) to be filed against a key figure in KRAZ's management. After the takeover, another US company with which KRAZ was doing business, Aldeco (US), lost its contracts as a result of court proceeding rigged by defendants. See id. ¶¶ 136-42.

3. The BRAZ Takeover

Transworld was also involved in the management of BRAZ, along with Lev Chernoi (defendant Chernoi's estranged brother) and BRAZ management. In 1998, two US companies, ALCOA and Reynolds Aluminum Co., each attempted to purchase a controlling interest in BRAZ. See id. ¶¶ 98-102, 144. In a manner identical to that used for the takeover of NKAZ, defendants arranged for a company that provided BRAZ with energy to file a false claim that BRAZ failed to pay its energy bills. In addition, defendants engaged in economic extortion by arranging for the termination of contracts to supply alumina (the raw material for making aluminum) to BRAZ. As a result, ALCOA and Reynolds were denied the opportunity to purchase BRAZ, and BRAZ management, Transworld and Lev Chernoi were forced to sell their interests at distressed prices. See id. ¶¶ 143-47.

C. The NKAZ Takeover

Following the modus operandi established in these takeovers, and with the funds generated by them, defendants took over NKAZ through a series of illegal acts that reached fruition in 2001.

1. The Initial Extortion and Use of the Wires Through Banks in the US To Launder the Proceeds of this Criminal Activity

In late 1994, early 1995, plaintiff MIKOM obtained management control of NKAZ. At the time, NKAZ purchased approximately 70% of its alumina from "PAZ." Chernoi gained control of PAZ and, in violation of prior contractual commitments, threatened to stop the flow of

alumina if NKAZ did not turn over 50% of all the profits from its sale of aluminum and 50% of all NKAZ's shares, as well as enter into a "co-operation" agreement with PAZ to purchase all of NKAZ's alumina requirements at premium prices. See id. ¶¶ 148-52. NKAZ, with no alternative source of alumina, complied, and paid Chernoi with undervalued aluminum that was sold into the world market, which trades almost exclusively in US dollars. Chernoi then incorporated a number of entities with the prefix "Trans," and transferred funds from this extortion through those entities, including one non-party RICO member, Trans-Commodities, which has offices in New York. See Complaint ¶¶ 65, 153-59.

2. The Murder of An American Citizen, the Extortion in Chicago and Subsequent Extortion Payments Made by Wire Through Banks in the US

By August 1995, NKAZ found an alternate source for alumina, and the President of MIKOM, Mikhail Zhivilo ("M. Zhivilo"), informed Chernoi that NKAZ and BMT Ltd. would no longer trade with PAZ. In September, M. Zhivilo's brother, Yuri Zhivilo ("Y. Zhivilo"), traveled to an aluminum trade conference in Chicago. Deripaska also traveled to Chicago to attend the conference, and plaintiffs believe that his expenses were paid for with corporate credit cards issued by American banks and guaranteed by Blonde Management (a NY corporation), which is in turn managed by Kislin (a NY resident). See Complaint ¶¶ 160-64.

In September, 1995, Felix Lvov, an American citizen working for the US company AIOC Corp. in connection with the KRAZ plant, was murdered. See infra Point I.B.2. At the Chicago conference, Deripaska threatened Y. Zhivilo that if M. Zhivilo did not cooperate with the Conspirators, "they" would do the same thing to the Zhivilos that "they" did to Lvov. See Complaint ¶¶ 162, 165.

Later in the fall of 1995, Chernoi summoned M. Zhivilo to a meeting in Tel Aviv.

Present at the meeting was non-party Anton Malevsky, head of the Russian-American Izmailovo Mafia, which uses New York as a center of operations. See id. ¶¶ 75-78. Chernoi threatened M. Zhivilo that if he did not continue to cooperate as before, it would be necessary for Malevsky's friend, "Yaponchik," to "become involved in the business," which was a threat on M. Zhivilo's life.⁷ And in March 1996, an actual attempt was made on his life. After that attempt, Chernoi again threatened M. Zhivilo that if "it" did not happen the first time, then "it" would happen the second time. See id. ¶¶ 165-70.

As a result of these threats, BMT Ltd. paid millions of dollars of "protection money" to companies controlled by the Conspirators. In total, between April 1996 and October 1999, sixteen payments of approximately \$1.5 million each were made to these companies, through banks in the US, including Chase Manhattan Bank and the Bank of New York. See id. ¶ 174 (providing details on these payments). After the payments were made, Chernoi laundered the money through defendants Pan-American and Blonde Management (both of which are US companies), and non-party RICO members Transmetal and Trans-Commodities (the latter of which is a US company). See id. ¶¶ 64-65, 171-76.

3. Defendants Recruit Kuzbass to Pressure the Aluminum Plaintiffs

In 1997, M. Zhivilo learned of a scheme by which the Conspirators, in conjunction with Kuzbassenergo ("Kuzbass"), the local electricity producer, planned to take over NKAZ by raising NKAZ's energy rates above the legal limit set by the Russian Federal Energy

⁷ "Yaponchik" refers to Vyacheslav Ivankov, the head of the Ismailovo mafia in New York, who was subsequently convicted of extortion in the US and is currently in prison. In fact, Your Honor authored the Second Circuit decision affirming Ivankov's conviction, and noted in that opinion, which concerned substantial criminal activity in New York, that Ivankov "had a reputation as one of the most powerful members of the Russian criminal world" and that the victims of this particular extortionate scheme were "frightened" when they heard of his involvement. See United States v. Abelis, 146 F.3d 73, 77 (2d Cir. 1998).

Commission, thereby creating a false NKAZ liability, and then forcing NKAZ into bankruptcy, just as they had done with BRAZ. The Conspirators supplied Kuzbass with 80% of the coal which it used to generate electricity, and used this leverage, in addition to their ties to Malevsky and Russian organized crime, to control Kuzbass. See id. ¶¶ 177-78.

In an effort to thwart the Conspirators' plan, NKAZ reached out to the Kemerovo regional deputy governor, Dimitry Chirakadze, who directed Kuzbass to reduce its tariffs to the lawful rate. NKAZ is located in the Kemerovo region. Kuzbass ignored these instructions. Chirakadze then arranged a meeting with the General Director of Kuzbass' parent company, but immediately before the meeting, on July 3, 1997, Chirakadze was attacked by two men, stabbed five times in the neck, back and stomach and incapacitated for six months. Plaintiffs believe that the Izmailovo Mafia carried out this attack at the behest of the Conspirators. Shortly thereafter, the Kemerovo regional governor who had appointed Chirakadze was removed from office and replaced with Aman Tuleyev. See id. ¶¶ 177-86.

4. Defendants Enlist the Assistance of Regional Governor Tuleyev and Coordinate the Wiring of Bribe Payments through US Entities

Almost immediately upon taking office, Tuleyev demanded that M. Zhivilo arrange for NKAZ and its trading partners to pay bribes, and threatened that if they failed to comply, control over NKAZ would be transferred to the Conspirators. They refused. Later in 1998, M. Zhivilo met defendant Chernoi at a World Cup soccer game in France, and Chernoi again threatened M. Zhivilo that unless M. Zhivilo cooperated and paid the bribes, Chernoi would "talk" to Malevsky, the head of the Russian-American Izmailovo Mafia. Again, this was a threat on M. Zhivilo's life. In 1999, M. Zhivilo met with Anatoly Chubais, a powerful Russian oligarch, who told M. Zhivilo that if he did not cooperate with the Conspirators, Chubais would instruct Tuleyev, whose appointment Chubais had arranged, to transfer control of NKAZ to the

Conspirators by whatever means necessary. See id. ¶¶ 187-92.

In 1999, Tuleyev agreed to assist the Conspirators in taking over NKAZ by arranging for the filing of false claims through the local Kemerovo procurator against NKAZ (“the Illegal Takeover”), much as the Conspirators had done with BRAZ. In return, in June and July 1999, the Conspirators directed defendants Pan-American (a US company) and Blonde Management (a NY company) – both operated and managed by defendant Kislin (a NY resident) – to wire through an American bank four payments to Tuleyev, totaling \$10.5 million dollars. See id. ¶¶ 193-98.

The plan to file false claims against NKAZ, which was similar to the modus operandi used in the BRAZ takeover, involved the following steps: (1) Kuzbass (NKAZ’s energy provider) would file a claim in Kemerovo alleging that NKAZ had failed to pay the illegally inflated energy rates; (2) that claim, reduced to a judgment, would enable the Conspirators to put NKAZ into an involuntary bankruptcy; and (3) the Conspirators would then control the conduct of the bankruptcy proceeding by appointing one of their agents as the Russian equivalent of a bankruptcy trustee, and by having their affiliated companies file false claims against NKAZ, thereby creating a group of creditors, not interested in recovering debt, but instead intent on transferring control of NKAZ to the defendants. See id. ¶¶ 199-202. That is precisely what happened.

5. Kuzbass Files False Energy Claims

Beginning in November 1994, NKAZ entered into a series of contracts with Kuzbass to set rates for purchasing electricity. However, on November 12, 1997, Kuzbass filed an action in which it claimed that NKAZ should pay significantly higher rates set by the Kemerovo Regional Energy Commission (“KREC”), a local agency under Tuleyev’s direction and control (“the First

Kuzbass Action”). NKAZ responded by filing a suit against KREC in which it alleged that the rates KREC imposed violated NKAZ’s contracts with Kuzbass, and also violated rates established by the Russian Federal Energy Commission (“the Kemerovo Tariff Action”). The Russian Federal Energy Commission reviewed the rates and agreed with NKAZ. Because the First Kuzbass Action depended on the result of the Kemerovo Tariff Action, the court presiding over the First Kuzbass Action adjourned that proceeding pending the outcome of the Kemerovo Tariff Action. See id. ¶¶ 203-11.

In response to the adjournment, and as part of the deal with Tuleyev, on September 10, 1999, the Kemerovo procurator filed a second action against NKAZ, in the name of Kuzbass, raising the same type of claim raised in the First Kuzbass Action (“the Second Kuzbass Action”). Although the Second Kuzbass Action should have been adjourned for the same reason that the First Kuzbass Action was adjourned, Tuleyev exerted his influence over the court and a judgment was entered against NKAZ on October 21, 1999 for approximately \$28 million dollars. See id. ¶¶ 212-16.

NKAZ appealed this decision, but Tuleyev was again able to exert his influence over the local appellate court and the judgment was affirmed on December 24, 1999. NKAZ appealed to the next appellate court, which, on January 19, 2000, entered a stay of the underlying judgment pending consideration of the appeal (the “Tumen Stay Order”). The Tumen Stay Order was significant because under Russian law only enforceable judgments may be used as the basis for an involuntary bankruptcy petition, but this victory would prove to be elusive in light of Tuleyev’s ability to control the outcome of judicial proceedings in the local Kemerovo courts. See id. ¶¶ 217-20.

6. The Sham NKAZ Bankruptcy Petitions

The same day the Tumen Stay Order was issued, Kuzbass filed an ex parte petition in the Kemerovo court for an order declaring NKAZ bankrupt, to appoint Sergey A. Chernyshev as NKAZ's Provisional Manager (the equivalent of a bankruptcy trustee) and to arrest NKAZ's assets (even though Kuzbass had already arrested NKAZ assets in the amount of its judgment in a prior proceeding). The court granted all of this relief on the same day the ex parte petition was filed, ignoring not only the Tumen Stay Order, but also other provisions of Russian law, addressed in greater detail infra, Point II.C.2.b.ii. Among other orders, the court froze all of NKAZ's assets and thus prevented NKAZ from paying its bills and conducting its business. See id. ¶¶ 221-30.

Almost immediately upon being appointed Provisional Manager, and between January 21 and February 14, 2000, Chernyshev submitted over 90 demands for documents with numerous subparts. The precise nature and sheer volume of these demands, as well as their content and timing, belie any claim that Chernyshev carried out his obligations in good faith and for legitimate purposes. In the accompanying declaration of Igor Rekhovsky, NKAZ's counsel at the time, we summarize, and annex, various demands. Chernyshev's purpose in serving them was transparent: Serve NKAZ with so many document demands under impossibly short deadlines (often within hours and sometimes after the deadlines had already passed) that NKAZ could not possibly comply, and then rely on NKAZ's inability to comply as a ground for ousting NKAZ's management, i.e., MIKOM. See id. ¶¶ 230-35.

On January 26, 2000, Chernyshev and Kuzbass filed petitions to remove NKAZ management and MIKOM. At the same time, the Kemerovo procurator filed a separate petition to declare NKAZ bankrupt, including the same grounds previously alleged by Kuzbass and